

REMARKS

In the Office Action issued on May 24, 2007, the Examiner made the previously issued election requirement final and acknowledged Applicant's election without traverse of Species X, rejected Claims 13, 22, and 28 under the second paragraph of 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention, rejected claims 1, 13, 16, 17, 21 through 25, 28 and 29 under 35 U.S.C. 102(b) as being anticipated by Moll (United States Patent Number 6,287,334), and rejected claims 26 and 27 under 35 U.S.C. 103(a) as being unpatentably obvious over Moll in view of Park (United States Patent Number 6,669,724).

The Applicants have fully considered the Office Action and cited references and submit this Reply and Amendment in response to the Examiner's rejections. Reconsideration of the application for patent is requested.

Claim Rejections Under 35 U.S.C. 112

In the subject Office action, the Examiner rejected Claims 13, 22, and 28 under the second paragraph of 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Specifically, the Examiner indicated that the limitation "the lengths" in claim 13 lacks sufficient antecedent basis; that the limitation "the second lateral edges" in claim 22 lacks sufficient antecedent basis; and that the limitation "the first portion" in claim 22 lacks sufficient antecedent basis.

The Examiner inquired whether the phrases "the lumen of the bodily passage" and "the inner walls of the bodily passage" in claims 13 and 28 refer to part of the patient's body vessel. The Examiner indicated that, if such a reference was being made, the Applicants are required to enter functional language to avoid a rejection under 35 U.S.C. 101.

The Applicants have herein amended claims 13 and 22 to correct the antecedent basis issues raised by the Examiner. The Applicants respectfully assert that the amendments to these claims fully overcome the rejections raised by the Examiner and request their withdrawal.

Regarding claim 13 and the Examiner's inquiry about a reference to part of the patient's body vessel, the Applicants respectfully assert that the claim as filed contains sufficient functional language. For example, the claim as filed includes the limitations "to form a seal" and "creates pockets." Each of these describes function and, therefore, the Applicants respectfully assert that the Examiner's rejection of claim 13 is inappropriate and request its withdrawal.

Regarding the Examiner's inquiry regarding claim 28 and the reference to the patient's body vessel, the Applicants have herein amended claim 28 to include functional language (*i.e.*, the added "configured to traverse" and "is configured to be attached to" limitations). Applicants respectfully assert that these added limitations provide sufficient functional language, and request withdrawal of this rejection of claim 28.

Claim Rejections Under 35 U.S.C. 102(b)

In the subject Office action, the Examiner rejected claims 1, 13, 16, 17, 21 through 25, 28 and 29 under 35 U.S.C. 102(b) as being anticipated by Moll (United States Patent Number 6,287,334).

The Applicants have herein cancelled claims 1, 16 and 29. The rejections of these claims, therefore, are moot.

Claim 13 requires "pockets between the leaflets and the walls of the bodily passage." Moll doesn't describe or suggest such pockets. Indeed, the Moll device includes pockets that are formed between sheets of the valve material (see Fig. 6 and the description of element 22 - 'temporary blood storage area' at the top of column 4).

Accordingly, Moll does not describe each and every limitation of claim 13 and cannot, therefore, properly serve as an anticipatory reference under 35 U.S.C. 102. Withdrawal of this rejection is respectfully requested.

The applicants have herein amended claim 17 to rewrite it in independent form (the added language merely adds the limitations that were present in the original version by way of its dependency on claim 16). Claim 17 requires "substantially parallel longitudinal attachment struts and a pair of opposing leaflets attached therealong." Moll doesn't describe or suggest such struts and leaflets.

Accordingly, Moll does not describe each and every limitation of claim 13 and cannot, therefore, properly serve as an anticipatory reference under 35 U.S.C. 102. Withdrawal of this rejection is respectfully requested.

Claim 21 has been amended to depend from claim 17. As such, Moll also fails to describe each and every limitation of this claim. Withdrawal of this rejection is respectfully requested.

Each of claims 22 and 23 require "a support structure...that includes...a first and a second commissure..." Moll does not describe or suggest a support frame that defines commissures for the attachment of leaflets. The present application clearly discusses the term 'commissures' (see paragraph 0044). Careful review of Moll reveals a complete absence of any discussion, illustration, or suggestion of any similar feature. As such, Moll fails to describe each and every limitation of these claims. Withdrawal of these rejections is, therefore, requested.

Similarly, claim 24 requires "a support structure comprising a series of proximal bends comprising commissural points for the attachment of the plurality of leaflets." Again, Moll lacks any discussion, illustration, or suggestion of any similar feature. As such, Moll fails to describe each and every limitation of this claim as well. Withdrawal of this rejection is, therefore, requested.

Claim 25 depends from claim 24 and is, therefore, distinguished from Moll based on its failure to disclose the limitation discussed above. Accordingly, Moll fails to describe each and every limitation of this claim as well. Withdrawal of this rejection is, therefore, requested.

Claim 28 requires "a wide pocket about the junction of the proximal and distal portions that is adapted for creating retrograde flow patterns sufficient to reduce stagnation of fluids therein." Moll does not describe or suggest a pocket that is adapted to create retrograde flow patterns. Indeed, Moll teaches directly away from such a pocket: the inner and outer walls of the leaflet are "joined together at the distal end of the device," making retrograde flow patterns impossible to achieve (see column 4, lines 4 through 10).

As such, Moll fails to describe each and every limitation of claim 28. Withdrawal of this rejection is, therefore, requested.

Claim Rejections Under 35 U.S.C. 103(a)

The Examiner rejected claims 26 and 27 as being unpatentably obvious over Moll in view of Park. The Applicants respectfully assert that the Examiner has failed to establish a *prima facie* case of obviousness because this asserted combination of references fails to teach each and every limitation of these claims.

Each of claims 26 and 27 depends from claim 24 and, as such, requires “a support structure comprising a series of proximal bends comprising commissural points for the attachment of the plurality of leaflets.” As described above, Moll fails to teach or suggest a support frame with commissural points for the attachment of the plurality of leaflets.

A careful review of Park reveals that it, too, fails to disclose “a support structure comprising a series of proximal bends comprising commissural points for the attachment of the plurality of leaflets.” As a result, Park fails to remedy the defect of Moll and, consequently, the asserted combination of references fails to teach or suggest each and every limitation of these claims. These references cannot, therefore, properly serve as a basis of an obviousness rejection of claims 26 and 27.

The Applicants respectfully request that the Examiner withdraw this rejection of the claims.

CONCLUSION

The Applicants have fully responded to the rejections listed by the Examiner in the May 24, 2007 Office Action. A Notice of Allowability relating to all claims currently under consideration is appropriate and is respectfully requested by the Applicants.

Should the Examiner have any questions regarding this Reply and Amendment, or the remarks contained herein, the undersigned attorney would welcome the opportunity to discuss such matters with the Examiner.

Respectfully submitted,

/J. Matthew BUCHANAN, Reg. No. 47,459/

J. Matthew Buchanan
Reg. No. 47,459
DUNLAP, CODDING and ROGERS, P.C.
Customer No. 42715
P.O. Box 16370
Oklahoma City, Oklahoma 73113
Telephone: (405) 607-8600
Facsimile: (405) 607-8686
E-Mail: matt_buchanan@okpatents.com
Web Site: www.okpatents.com
Attorney for Applicants